

Court of Appeals  
OF the State of Washington

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State of Washington, } No. 412090-96  
Respondent.

Vs.

Charles S. Longshore,  
Appellant.

STATE OF WASHINGTON  
COURT OF APPEALS  
FILED  
APPEALS  
DIVISION ONE  
DEC 2 2015  
1:16 PM  
K  
BY DEPUTY

Statement of  
Additional Grounds  
For Review

Comes now after receiving and reviewing  
the opening brief of Appellant prepared by my  
Attorney. It is hereby summarized below are additional  
Grounds for review that are not addressed in  
that brief. I understand the court will  
review this statement of additional grounds  
for review when my appeal is considered on  
the merits.

Additional ground 1

pm 12/17/15

SAC

(b)

- i. The prosecutor committed misconduct as well violated Mr. Longshore's rights to confrontation. While during his closing argument he argued at least (9) people accused him of the crime but was never called to testify.

In the instant, the prosecutor during his closing argument stated: "Anybody like Bobby, Kristina, Ida, Tammy, Armande, or anyone else can do, make anybody else who may have been there or in the area, from saying it was Charles Longshore who did it."

It didn't stop them from identifying him at all" RP 2489  
(A) Prosecutor Misconduct

In presenting a criminal case to the jury, it is incumbent upon a prosecutor, as a quasi-judicial officer, to seek a verdict free of prejudice and based upon reason. A prosecutor's duty to be fair is as important as his duty to the general public to actively prosecute violators of the law. See State v. Torres 16 Wn. App 254, 555 P.2d 1069 (1976), State v. Charlton, 90 Wn.2d 657, 585 P.2d 142 (1978). Prosecutor misconduct which denies a defendant a fair trial violates due process. See State v. Belgarde 110 Wn.2d 809, 558 P.2d 173 (1976) appeal on remand 62 Wn. App. 684, 815 P.2d 812 (1991) review granted in part 113 Wn.2d 1021, 826 P.2d 147 (1992).

But when a prosecutor argues to a jury and releases names of alleged witness who were never called to testify. Arguing that they identified him as the shooter. This not only violates a fair trial, but violates the confrontation clause. As Ida, Armande, Carry, & Mike were never called to testify.

In re Glasman, 175 Wn.2d 296, 286, P.3d 673 (2012) our Supreme Court spoke at length regarding prosecutor misconduct.

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In stating, "Although a prosecutor has wide latitude to argue reasonable inferences from the evidence, a prosecutor must seek convictions based ~~on~~ only on probative evidence and sound reason", It further stated, "consideration of any material by a jury not properly admitted as evidence vitiates a verdict, when there is a reasonable ground to believe that the defendant may have been prejudiced."

"To prevail on a claim of prosecutor misconduct, a defendant is required to show that in the context of the record and all of the circumstances of the trial, the prosecutor's conduct was both improper and prejudicial; to show prejudice, the defendant must show a substantial likelihood that the misconduct affected the jury verdict." In re Glazman, 175 A.W.2d 646, 286 P.3d 673 (2012).

In the issue at bar, prosecutor argued to the jury multiple names of alleged witnesses that were never called. With the ill-intention of persuading the jury beyond question that Mr. Longshore is guilty, the prosecutor argued that (8) names of witness said Mr. Longshore committed the crime, and identified him, only (3) of which testified. Introducing evidence that was never used at trial, affecting the jury's verdict.

This case is largely a circumstantial case. The evidence at trial is both consistent with an exculpatory hypothesis and inculpatory hypothesis. This court has ruled. In State v. Bridge, 91 Wn. App. 98, 966 P.2d 413 (1998) "when the evidence presented is consistent with both an inculpatory hypothesis and exculpatory hypotheses, then such evidence is insufficient to support a conviction". There, the court reversed a conviction based upon fingerprint evidence because such evidence was insufficient to establish guilt beyond a reasonable doubt. Bridge, 91 Wn. App. at 100. As such, the prosecutor's improper comments and improper introducing

(3)

of evidence not only violated Mr. Longshore's confrontation rights but as well affected the jury's verdict as it failed to tell the jury that the state has more evidence than what was presented.

In re Glasman, the court also stated "A prosecutor cannot use his or her position of power and prestige to sway the jury and may not express an individual opinion of the defendants guilt, independent of the evidence actually in the case".

This is exactly what happened here, the prosecutor expressed his personal opinion of guilt and improperly used evidence not admitted at trial to persuade the jury's verdict.

### B violation of confrontation

The Sixth Amendment provides "in all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witnesses against him and to have compulsory process for obtaining witnesses in his favor".

Article I, section 22 of the Washington State Constitution provides "in criminal prosecutions the accused shall have the right to testify in his own behalf, to meet witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf".

When the prosecutor argued to the jury Ida, Armando, Carrie and Mike stated Charles did it, and I identified him. See R.P.2489 this violated Mr. Longshore's Right to Confrontation.

In State v. Connie J.C. 86 Wn. App. 453, 937 P.2d 1116 (1997) the court held "prosecutor offered statement of plea of guilty in wife's trial as accomplice; no evidence husband was not available to testify; Right to confrontation violated."

This case is remarkably similar. As there the prosecutor offered evidence, and no evidence exist that these were not available to

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testify, violated Mr. Longshore's rights to confrontation. This was not harmless, as these weren't alleged to have been immissible witness. The prosecutor specifically stated "Prevents anybody like Bobby, Kristina, Ida, Tammy, Armando, or anyone else Carrie, Mike, anyone else who may have been there or in the area from saying Charles did it. It didn't stop them from Identifying him at all" RP 2489.

It's known from the trial that Bobby, Kristina and Tammy testified. But the only Alleged actual witness was Bobby to the crimes. Bobby testified that a number of people were behind him when he shot Mr. Longshore shot and killed with Mr. Taber and Mr. Drake. While Mr. Longshore testified it was Bobby who shot and killed with Mr. Taber and Mr. Drake.

Here the prosecutor declared at least (4) names of individuals to the Jury during his closing argument that said Charles did it. These names Ida, Armando, Carrie and Mike where the (4) in addition to the (3) Bobby, Kristina, and Tammy who where the only ones out of the list who testified. Bobby being the state's only Alleged witness to the crime who happens to be the Alleged Accomplice and who the defence accused of committing the murders.

The court held in State v. St. Pierre 111. Wn.2d 105, 759 P. 2d 383 (1988) "out of court statements of co-defendants violated the defendants right to confrontation". Should these Alleged names have testified, they would have pursuant to a plea Agreement as co-defendants/Accomplices. As all present was charged with either (a) rendering Criminal Assistance or (b) Murder in 1<sup>st</sup> degree.

In Lee v. Illinois 476 U.S. 530, 106 S.Ct. 2056 90 L.Ed 514 (1986) on remand 144 Ill App. 3d 155, 155 Ill Dec. 217, 517 N.E.2d 628 (1982). "Accomplice; confessions that incriminate defendants are presumptively

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unreliable, and defendant's rights under confrontation clause of the Sixth Amend violated.

"The purpose behind the right given a criminal defendant by Sixth Amendment to confront witness against him is to allow cross examination to test the perception, memory, credibility and narrative power of the witness" see state v. parnis 98 U.S. 2d 140 654 p.2d 77 (1982)

"The right of confrontation under federal and state constitutions provisions is violated by admission of hearsay statements if the declarant is available or the statements are not shown to be reliable" see state v. Griffith, 45 U.S. App. 2d 8, 722 p.2d 247 (1986)

"So when the prosecutor was allowed to argue the additional names statements to the jury, it denied the defense to confrontation to verify if the statements are reliable" It allowed the prosecutor to testify on behalf of the witnesses, and state to the jury "they said Mr. Longshore committed the crime, and were able to identify Mr. Longshore."

The error is not harmless, as it was misleading and improperly introduced evidence not submitted in trial. As well denied Mr. Longshore his right to confrontation and ability to cross-examine witnesses.

As such this court should reverse the conviction and remand for a new trial to allow Mr. Longshore to enjoy his right to confrontation as well cure the prejudice.

#### Add'l Ground 2

2. The prosecutor committed misconduct when he improperly argued the wrong definition of "premeditation" to the jury.

(b)

In the issue at bar, the prosecutor stated during his closing argument: "Essentially, what you need to understand is that for a killing to intentional killing to be premeditated what is necessary, is that there was a decision made to kill and then acted upon, and it can happen like that (snipers) RP 2726"

In the instructions to the Jury, specifically #14. The court defined premeditation to be the following:

"premeditation means thought over beforehand. When a person, after any deliberation, forms an intent to take human life, the killing may follow immediately after the formation of the settled purpose and it will still be premeditated. premeditation "MUST" involve more than a moment in point of time. The law requires some time, however long or short, in which a design to kill is deliberately formed."

So when the prosecutor argued its essentially a decision made to kill and acted upon, and it can happen like that "snipers" RP 2726. It mislead the Jury. In State v. Browning 38 Wn. App 777 689 P.2d 1163 (1984) This court held: "Prosecutor improperly stating instruction is misleading." Further in State v. Davenport, 33 Wn. App 704 657 P.2d 794 (1983) ~~RP 2726~~ conviction reversed <sup>100</sup> Wn.2d 757 675 P.2d 1213 (1984) stating: "Argument on law not given in the instruction."

It's well settled the court's instructions are the law of the case. But when a party undermines the definition and argues the wrong law to the jury. Especially as to an element of a crime. It can't be said the

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defendant has had a fair trial. As the jury is now permitted to convict a person with a lesser definition to an actual Element. This prejudiced Mr. Longshore to the effect it allowed the jury to convict him on the wrong definition of premeditation. This error was not harmless.

Both Bobby B. Charles testified to the same effect.

"I was on the porch vs. By the door, Mr. Longshore/ Mr. Raphael, hit Roxy in the head with the gun. Both testified neither one of them knew this was going to happen, none was there an agreement and was shocked at what accrued. The only difference between the two's testimony in this aspect is: Mr. Longshore stated he only witnessed Ms. Taber get hit in the head then shot, while Mr. Raphael states Mr. Longshore hit her in the head then Bang, Bang. Killing both Mr. Drake and Ms. Taber. But no evidence exists of a plan or even a thought ever being had. What the evidence proves someone hit Roxy a accidental discharge went off and it appeared she may have been shot, then someone took a step back and shot Ms. Taber and Mr. Drake, what was consistent by all testimony that there was a bang then 2 second pause then Bang, Bang. RR.2431. Whether premeditation was important for the Jury to consider, as the evidence tends to show, as well what the prosecutor argued. Is what we call intentional killing, NOT premeditation, which makes this very important that the Jury be provided the correct definition. As stated earlier this error was not harmless. As such this should reverse and remand for a new trial.

### Additional Ground 3

(~~④~~) The prosecutor committed misconduct by expressing his personal opinion of Mr. Longshore's credibility.

In the issue at bar, the prosecutor domenitly threw out his closing arguments expressed Mr. Longshore is a liar. Attacking his credibility by expressing his personal opinion.

see RP 2405 for example "I'll submit lies to police and says hey I'm going to red Apple". This was never Admitted to by Mr. Longshore to be a lie. Mr. Longshore testified that he was going to red Apple. This was a question for the Jury to determine, not the prosecutor.

See RP 2413 "The only thing that you know he told the truth about on June the 4th is about his lies". This is another personal opinion comment on Mr. Longshore's credibility. As Mr. Longshore testified that June the forth was the most accurate and to be ~~90%~~ the truth.

See R.P. 0418 "He's lying and its breaking down fast - and finally... he lies about who killed Antreia Taber and Tyler Drake." This is another improper comment on credibility. As this was the main question for the Jury to review. Who shot and killed Ms. Taber and Mr. Drake.

See R.P. 0473 "A man who's proven that he will lie, not just 'hey, I'm going to try to stay out of it... I don't know anything' I don't know anything. But, he will lie at every turn for whatever suits his needs. He will continue to lie in the face of the truth he will lie, and that's what he did in this case." It's again personal opinion. As it goes to the credibility of Mr. Longshore.

See also R.P. 2791 "why so many lies once he's captured? Mr. Longshore moves effortlessly from one story to another explaining he's challenged by investigators ladies and gentlemen. May be could have given the version of events that night that he gave you on the witness stand at anytime to any one of those detectives and he didn't, because it's not true! It's just another test ~ he only fabricated this story that nobody did it after detective suggested it to him"

As shown above the prosecutor was attacking Mr. Longshore's credibility, by expressing his personal opinion that Mr. Longshore is a liar and telling nothing but lies. Respectfully, this was for the Jury to determine given the position of the prosecutor and his office the jury assumes its truth, without making an independent decision based on the evidence. This violated Mr. Longshore's right to a fair trial.

The defense never stated: the prosecutor is a liar, it all respects. Even though Mr. Longshore's voice Acted

Innocence. But remained fair and professional by not commenting on the prosecutor or his prosecuting decisions. Likewise the prosecutor should not been allowed to make such arguments. Further it's clear that the prosecutor was acting with ill intentions and his conduct was so flagrant as to deny a fair trial violating due process, it such Mr. Longshore respectfully asks the court to reverse and remand for a new trial.

#### Additional Ground 4

##### (e) The prosecutor committed misconduct

by displaying improper outbursts at the defence closing argument in front of the jury.

RQ 2468

RQ 2468 / Mc Hester stated, "Thank you your Honor. Your Honor what I observed, and it was done quite audibly was sort of a response that is sort of a reflective response when someone would suggest - I guess to mimic it was pft (phonetic) type of response. And I don't know how to make a record and make that noise, but it was something along those lines that suggests, you know what a crock how could he make that argument. This again later, within the same paragraph of argument, that Mr. Putter was making, and the first incident that I indicated was from Mr. Dorey. The second incident was from Mr. Richards and it was when Mr. Putter referred to Mr. Longshore as a kid. Within ear shot of me the comment was kbd, as if that's some joke, like how could you call this guy a kid, suggesting that the reference in that argument was ridiculous. These are the two incidences

(1)

that I picked up on, not because I was looking for it, because I couldn't help it."

was the testimony of Mr. Hester after Mr. Partzer moved the court for a mistrial based on the prosecutor's remarks to counsel's argument. See Rp 2467 - 2470.

These improper remarks that the prosecutor's were outbursting. Is outrageous and undermines defence counsels integrity. We had testimony by an officer of the court that it occurred and was prejudicial to counsels argument.

Unfortenately the court ruled it was not audible to the court which isn't the test. The test is whether the jury interpreted the remarks. In the case at bar, the jury box was only 3ft from the prosecutor's table, on ~~on~~ just the other side defence table is stationed. This is Mason County Superior Court. As small court room were its easy to pick up audible.

The prosecutor should nor be allowed to benefit from his actions as they where not fair and harmful to Mr. Longshore. As such, this court should reverse and remand for a new trial.

#### Additional Ground 5

~~Emotional Errors denied Longshore a~~

~~Fair trial~~ the court erred when it denied defence an adverse inference Jury instruction based on destruction of evidence.

(12)

Multiple times throughout this case, the defense moved to dismiss the charges based on the destruction of evidence. This was because the detectives failed to preserve Mr. Raphael's clothing for testing and prior to them being retrieved they were laundered. As well the state failed to preserve DNA found on the murder weapon when it ordered that the test must proceed, even if that means total consumption of the sample. Without notice to the defense denying them the ability to take part or otherwise test the DNA sample found on the firearm. See Defense motion to dismiss. RP 556 - 567.

Subsequently, the court denied the motion because the defense failed to establish "Bad faith". At the conclusion of the evidentiary portion of the trial, the defense moved again for dismissal based on the destruction of evidence. The defense relied on the detectives testimony that policies are in place and where not followed, the court again denied the motion not seeing "Bad faith" RP 220-224. At that time defense counsel moved for a spoliation instruction to level out. ~~The court said we can't raise this issue until~~

Starting, it intended to submit the instruction at the time of the jury instructions RP 2197. During instructions defense counsel cited pier 67 and Brady for grounds to allow the instruction. As all parties agreed this is the first Washington State Criminal case to have the issue. RP 230-239. As no party could find a criminal case dealing with it.

Mr. Langshore contends the court erred. ~~Referring United States v. Sivilla, No. 11-50484 (9<sup>th</sup> Cir May 7<sup>th</sup> 2013)~~ where in the U.S Court of Appeals explained that Bad faith must be shown to support dismissal and not need be shown for adverse

(13)

Inference instruction, the trial court also erred by concluding it was a mandatory inference and favored by law. The defence submits it is not mandatory inference as it allows the state to explain beyond a satisfactory. Therefore, not closing out the state from arguing a satisfactory explanation.

In a civil case Henderson, 80 Wash. App at 604, 910 P.2d 522 stated: "denial of spoliation is reviewed for abuse of discretion."

Applying the wrong standard is Abuse of Discretion - In Avril Irene Tavai and their Marital Community Appellants v. Walmart Service, Inc 176 Wn. App 122 307 p-3d 911 (2013) the court "decided whether to apply a spoliation inference the Court of Appeals uses two general factors (1) The potential importance or relevance of the missing evidence and (2) The culpability or fault of the adverse party"

Mr. Longshore contends this should be the same standard applied in criminal cases in determining whether it should be given. This error was not harmless, it denied Mr. Longshore meaningful testing, and the potentially useful evidence could of lead to who the perpetrator was. As Mr. Longshore stood that it was Mr. Raphael. But when the state failed to preserve murder suspect Mr. Raphael's clothing and failed to preserve the DNA found on the murder weapon this denied due process and Mr. Longshore's right to a fair trial. It per the state at such an advance that all evidence that could of been used that was destroyed prevented the defence from putting both evidence and violated the Brady Rule to preserve it.

This instruction was the only leveling off the scale the

defence had to be fair.

As such this court should reverse and remand for a new trial with instructions.

#### Additional Ground 6



The court erred when it denied the defence request to include a mere presence jury instruction.

During jury instruction defence counsel moved to admit a QM circuit pattern instruction of "mere presence". As it was the defence theory that Mr. Longshore was only present and a witness, not a participant. As well more than mere presence needs to be shown. RP2225-2230. In order to find Mr Longshore guilty. As counsel believed just the presence could be enough for the jury to believe Mr. Longshore is guilty.

Counsel was not only to depurate this thought but needed the instruction to argue its theory of the case see further #16 instruction JK5,250

The court subsequently denied the instruction, as it believed the instructions are sufficient to argue the defence theory.

Mr. Longshore contends the court erred and it denied him the ability to argue his case and denied due process and a fair trial. Because repeatedly every instruction the defence put forth was denied. There was no weighing off the scale.

Mr. Longshore asserts, as a result of the courts denial he was denied a fair trial. As such this court should reverse and remand for a new trial.



8. The court erred when it closed the court room by sending the jury to a secluded room <sup>to complete</sup> ~~out of sight~~ the time constraints.

In the issue at bar, the court removed the entire jury panel to a secluded room to complete Juror questionnaires. Mr. Longshore contends this violated his right to a public trial. See our docket. In violation of State v. Slet, 169 Wn. App. 766, 282 P.3d 101 (Div II 2012).

The Slet court dealt with jurors being taken to chambers to complete Juror questionnaires. It determined this to be a structural error, and reversed and remanded for a new trial. Like there, the jurors were taken from the court room to complete questionnaires. Although this was not a single questioning of individual jurors. It was the same as that. Except the court removed the whole panel from the court room to the jury room to complete Juror questionnaires.

This structural error violated Mr. Longshore's right to a public trial. In violation of State v. Slet, & Boneclub.

#### Additional Ground 7

( The court violated Mr. Longshore's right to a public trial when it sealed the Juror Questionnaires in violation of Boneclub.

In the case at bar, the trial court not only removed the jury to a secluded room to complete Juror Questionnaires but sealed the records in violation of Boneclub. Closing, Mr. Longshore and the public from participating in ~~participating in~~ this portion of trial.

This court should reverse and remand for a new trial for the violation of Mr. Longshore's public trial.

## Addendum G

- (1) The court violated Mr. Longshore's right to a public trial when it answered a controversial jury question regarding Accomplice Determination.

In the issue at bar, the jury submitted a question to the court wherein it stated:

① "if by definition in instruction #11 someone is determined to meet the criteria of an accomplice would they

therefore be guilty of the finding of either 1<sup>st</sup> or 2<sup>nd</sup> degree murder?

② are we allowed a copy of Washington state law regarding 1<sup>st</sup> and 2<sup>nd</sup> degree murder.

③ the court: You have all the instructions in this case.

See DKT # 270

At all times the state prosecuted Mr. Longshore as the principle, at all times the defense stood on merely present. The court never instructed the jury to consider Accomplice liability. Yet the jury determined to meet the criteria of accomplice. This is a disputed fact and not just ministerial.

In State v. Koss it was determined the defendant did not need to be present for ministerial matters. In the issue at bar we have no record of counsel present, no record made as to it being placed on the record, and no record of Mr. Longshore being present. This is a violation of Mr. Longshore's right to a public trial. 159 Wash. App. 8241 P. 3d 415 (Div 3 2010)

All three trials, defense counsel objected to Mr. Raphael

being an accomplice. Because theres no evidence of solicitation, aiding ect to meet the criteria. The state charged Mr. Longshore as the principle, the defence claimed innocence. There would of been an objection to this answer by Mr. Longshore. As it did nothing to aid the jury. It can't find Mr. Longshore guilty as an accomplice. This was not ministerial but controversial and deserved argument, Mr. Longshores presence, and placed on the record. As such this court should reverse and remand for a new trial. Citing State v. Koss, 158 Wash. App. 8241 P.3d 415 (2011)

#### Additional Ground 9

(10) The court erred by entering Aggravating circumstances, because the evidence was insufficient.

"common scheme or plan"

It is elementary that the state must prove every element of the crime charged.

In challenging to the sufficiency of evidence to prove an aggravating factor in Aggravated murder, this court must view the evidence most favorable toward the prosecution to determine whether any rational trier of fact could have found the presence of aggravating factors, beyond a reasonable doubt" State v. Green, 94 Wash.2d 316, 221 616 P.2d 628 (1980)

In State v. Finch (1999) "the defendant argued that sufficient evidence does not exist that he killed Leon Martin and Scot Kinard as part of a common scheme or plan. See Rev.10.95(2)(o). Under this aggravor multiple murders are required and there must be a "nexus between the killings". Pirtle, 127 Wash.2d 661 904 P.2d 245 (quoting) State v. Dictado, 182 Wash.2d 277, 285

687 P.2d 172 (1984)

Here, there's no evidence of any plan or nexus, between the killings. What the evidence shows is (2) people were killed and no one knew why. That's it.

This Aggravator may refer to the situation where "several crimes constitute constituent parts of a plan in which each crime is but a piece of the larger plan." *Pirtle*, 127 Wash. 2d at 662, 904 P.2d 245 (quoting) *State v. Lough* 125 Wash. 2d 847, 855, 889 P.2d 487 (1995).

Even though the prosecutor suggested that it was pursuant to a drug debt owed, Mr. Raphael and Mr. Longshore both testified there was no plan, no agreement and what happened, no one knew it was going to happen.

"The term refers to a larger criminal design, of which the charged crime is only part" *Pirtle*, 127 Wash. 2d at 662, 904 P.2d 245, *State v. Bowen*, 48 Wash. App 187, 192, 738 P.2d 316 (1987). "To prove the existence of this factor, the killings "must" be connected by a larger criminal plan." *Pirtle*, 127 Wash. 2d at 662, 904 P.2d 245. Thus the "nexus" exists when an overarching criminal plan connects both murders" see 137 (Wn. 2d 836) *Pirtle*, 127 Wash. 2d at 662, 904 P.2d 245, see also *Dictado*, 102 Wash. 2d at 277, 687 P.2d 172 ("killings were in furtherance of a gambling scheme") *State v. Grisby* 97 Wash. 2d 493, 496, 647 P.2d 6 (1982) (multiple killings in revenge for being sold bad drugs).

In *Pirtle*, the defendant argued that there must be evidence of a plan to commit multiple murders to satisfy this Aggravator. The court rejected the argument explaining that it misconstrued common scheme or plan. The court explained the evidence need not show the existence of a plan to kill the named individual.

or even the killings be committed for precisely the same reason?" Only that the killings are connected by a larger criminal purpose.

Here looking at the evidence in the light most favorable to the state. It can't be said that there's a "nexus" between the killings or they're connected by a larger criminal purpose. Even though the prosecutor speculated the murders was in result of a drug debt owed. The evidence only shows (2) individuals were killed and neither Mr. Longshore nor Mr. Raphael knew the crime was going to happen. But instead was a spontaneous murder. As such this court should reverse and remand for the sentence of murder.

(or Result of a single act  
of the felon.)

Here the evidence shows there was multiple acts in the course of the murder's. And that they were separate acts. (1) Ms. Taber was hit in the head with the weapon, (2) a shot went into the wall of the house, (3) Ms. Taber was killed, (4) Mr. Drake was killed. (4) separate acts. It's not like cases where you fire over two people at the same time, or bomb somebody's house and they died as a result.

As such this court should reverse and remand for the sentence of murder.

Committed the murder to conceal  
the ~~commission~~ of a crime or to  
protect the identity of my person  
committing a crime.

(20)

Mr. Longshore contends what crime did the defendant commit for the murder to conceal the commission of a crime.

Counsel suggests Assault, by the hitting of the head is sufficient. Mr. Longshore disagrees. There was no substantial bodily harm, therefore would be assault 4<sup>m</sup> degree a misdemeanor. Then counsels suggests "or" to protect or conceal the identity of any person committing a crime.

If this be the case, why is myself and Mr. Raphael alive. There's no merit to these Aggravators. Respectfully it was a "spontaneous killing" no one knew it was going to happen. The evidence suggests that a decision was made to kill after the accidental discharge during the struggle between Ms. Tuber and Mr. Raphael.

As such, all aggravators should be dismissed and the charge should be reduced to murder 2. Intentional killing's.

#### Additional Ground 10

(1) The state failed to prove beyond a reasonable doubt that Mr. Longshore acted with premeditation. An element due process requires the state to prove.

Looking at the record, and evidence in the light most favorable to the state, respectfully the evidence does not establish premeditation.

The evidence proves (1) on May 28<sup>th</sup> 2012 Antnea Tuber and Tyler Drake where shot and killed, (2) in the state of Washington

(2)

(3) with intent to kill, (4) Tyler drove and Antrea Taber died as a result.

"Premarkitation means" thought over beforehand when a person, after any "deliberation forms an intent to take human life, the killing may follow immediately after the formation of the settled purpose and it will still be premeditated. Premeditation "must" involve more than a moment in point of time. The law requires sometime, however long or short, in which a design to kill is deliberately formed see instruction #14.

When you look at the evidence as a whole and instruction #15, where in it states: A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitutes the crime that's what the evidence tends to show. A intentionally acted killing. Because there's no evidence of thought over beforehand, we have testimony that it happened like Bang initial pause bang, bang. Where you'll see this is when Antrea Taber was hit with the gun, a accidental discharge went into the ruff, and they is the initial pause then bang, bang. Killing both Mrs. Taber and Mr. Weiske spontaneously.

What the evidence suggests, is there was "no premeditation as such the court should reverse and remand dismissing the murder charges and reducing the charge to murder 2.

Additional ground #1



The court erred by admitting statements when the defendant was in the functional equivalent of being in custody requiring Miranda warnings.

As new invoked his right to remain silent and be counsel.

## Miranda warnings required?

Custody: Includes "the deprivation of freedom of action in any significant way" see Miranda, 384 U.S. at 444, See also Stanbury v. Cal. 311 U.S. 318, 322 (1941) (per curiam) (The ultimate inquiry is "whether there was a formal arrest" or "restriction on freedom of movement" of the degree associated with a formal arrest.) (quoting) Cal v. Beheler, 463 U.S. 1131, 1125 (1983)

At issue Mr. Longshore was a rear seat passenger of a two tone Dodge pickup. Crime scene tape was spread across the street. But was not visible in the dark. The ~~passenger~~  
Driver David Helldreth accidentally drove in to the crime scene tape. Where multiple officers some with weapons drawn approached the vehicle and questioned the driver and ordered him to step out. Then ordered Mr. Longshore and another passenger Tammy Ault out. Mr. Longshore was initially elusive and gave a false name of Jason Longshore who turned out to have a felony D.O.C warrant out for his arrest. So Mr. Longshore was arrested placed in handcuffs and placed against the vehicle. Sgt. Helldreth recognized Mr. Longshore and asked why he lied about his name. Mr. Longshore stated: He thought he had a warrant. A warrants check was run and Mr. Longshore turned out to have a warrant out of Olympia.

Sgt. Helldreth asked Mr. Longshore what he was doing here. Mr. Longshore while still in cuffs under arrest stated to be dope. Mr. Helldreth then asked Mr. Longshore if he would be willing to provide a statement to detectives. While still handcuffed and surrounded by police Mr. Longshore feeling the pressure said "yes". Shortly there after Det. Moran appeared took the man out of cuffs and

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Police escorted him to a vehicle to make a statement. Police officers were constantly passing the vehicle and at 1 point interrupted the interview to notify Det. Moran that a warrant for the house has been received.

At that time Mr. Longshore asked if he was under arrest or free to go. Attempting to end the interview while the detective kept questioning Mr. Longshore to the point Mr. Longshore asked for an attorney because he wasn't being allowed to stop the interview and allowed to leave when he wanted.

After the interview stopped Det. Moran escorted Mr. Longshore to SGT. Heileman and asked if Mr. Longshore is free to go. Mr. Heileman having nothing more to hold Mr. Longshore allowed him to leave see RP 17, RP 31, RP 32, RP 33, RP 34, RP 38, RP 39, RP 41, RP 25, RP 43, RP 44 RP 45, RP 48, RP 68, RP 61, RP 62, RR 65, RP 66, RP 230, RP 253, RR 255, RP 256, RP 257, RP 260-262, RP 267, RP 268, RP 269, RP 281, RP 321. For all examples of being in functional equivalent of custody.

In U.S. v. Newton, 369 F.3d 659, 676-77 (2nd Cir. 2004) "In custody when defendant thought police told defendant was under arrest because significant restriction on freedom".

In U.S. v. Jacobs, 431 F.3d 99, 105 (3d Cir. 2005) "In custody because not informed was not under arrest, but defendant did not feel free to leave, asked confrontational questions".

In Moore v. Ballone, 658 F.2d 218, 225-26 (4th Cir. 1981) "in custody because brought to police station not held free to leave at any time".

(24)

"In custody v. Earle, 405 F.3d 278, 287 (5<sup>th</sup> Cir. 2005)

"In custody because liberty constrained when taken from home and interviewed in closed room"

"In custody v. Coyle, 205 F.3d 269, 284-85 (6<sup>th</sup> Cir. 2000)

"In custody because officers drew guns and pointed them at him, and ordered him on to the ground"

"In U.S. v. Abdulla, 294 F.3d 830, 834 (7<sup>th</sup> Cir. 2002)

"In custody because arrested and handcuffed"

"In U.S. v. Ollie, 442 F.3d 1135, 1138-40 (8<sup>th</sup> Cir. 2006)

"In custody because ordered to meet with police and not informed of freedom to end interview or not to answer"

"In U.S. v. Kim, 292 F.3d 969, 978 (9<sup>th</sup> Cir. 2002)

"In custody because doors locked not allowed to communicate and surrounded by police officers."

"In U.S. v. Griffith, 7 F.3d 1512, 1519 (10<sup>th</sup> Cir. 1993)

"In custody because private questioning, no disclosure that free to leave or not to answer and blocked by police

At least in every circuit across this country, the courts have dealt with and continue to uphold the functional equivalent requiring Miranda. In all the cases above in one way or another demonstrate why this court should reverse and remand for a new trial with instructions to suppress this statement.

As our US Supreme Court stated "A suspect is in custody if under the totality of circumstances, a reasonable person would not feel free to terminate the encounter and leave" see Yarbrough v. Alvarado, 541 U.S. 652, 663-65 (2004)

It's apparent here, that Mr. Longshore would not feel free to leave. Because when he attempted to leave by calling Det. Moran if he was free to go without attempting

To stop the interview, The detective didn't initially allow Mr. Longshore to leave and began to ask confrontational Questions see exhibit 3 statements of May 28th.  
 As well prior to allowing Mr. Longshore to leave at any time was under arrest, in handcuffs and not free to go. Yes the handcuffs were eventually removed but this was only done if Mr. Longshore spoke to detectives. But was not told free to leave or he didn't have to answer any questions. As such the only answer is Mr. Longshore under the totality of circumstances did not feel free to leave. As such Mr. Longshore should of been advised of Miranda warnings and this statement should of been suppressed.

- (1) See exhibit 3 pg 1 "No advisement of right to leave or that Mr. Longshore did not have to answer questions".
- (2) Pg 4 Line 36 - Pg 5 Line 14, "where officers interrupt interview"
- (3) Pg 5 Line 24 "Mr. Longshore attempts to stop the interview invoking his right to remain silent."
- (4) Pg 5 Line 27 "Detective continues to ask questions".
- (5) Pg 5 Line 38 "Advising detective he told police he wanted an attorney present before any questioning".
- (6) Pg 6 Line 3 "Mr. Longshore confirms he wants the interview stopped".
- (7) Pg 6 Line 7 "Mr. Longshore asks if he's free to go".
- (8) Pg 6 Line 30 "Mr. Longshore again states if I'm not under arrest I want to leave this place".
- (9) Pg 6 Line 36 "Mr. Longshore again asks to go".
- (10) Pg 6 Line 38 "The Detective tells him just a second".
- (11) Pg 6 Line 40 "Mr. Longshore again states I want an

(26)

ATTORNEY HERE CAUSE I FEEL LIKE YOU GUYS ARE PURPOSELY  
THEN THE TAPE ENDS ABRUPTLY.

AS SUCH AND SHOWN, THIS COURT SHOULD REVERSE AND  
REMAND TO SUPPRESSED THIS STATEMENT. AND GRANT A NEW TRIAL.  
AS NOT ONLY DID MR. LONGSHORE INVOKED HIS RIGHT TO REMAIN  
SILENT UNWILLY THOUGH THE STATEMENT BUT WAS DEMANDING AN  
ATTORNEY. ALL WHILE UNDER THE CIRCUMSTANCE FEELING HE WASN'T  
FREE TO LEAVE REQUESTING MIRANDA WARNINGS.

ADDITIONAL GROUNDS 12



THE COURT ERRED BY ADMITTING

THE JUNE 1ST STATEMENT AFTER MR.

LONGSHORE INVOKED HIS RIGHT TO

REMAIN SILENT.

"IF an individual indicates in "any manner at anytime  
prior to or during questioning, that he wishes to remain  
silent or speaks to an attorney, the interrogation must cease."

See *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.  
2d 694 (1966); *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880,  
68 L.Ed. 2d 378 (1981); *State v. Coles*, 28 Wn. App 563, 625 P.2d  
713 (1981); *State v. Chapman*, 84 Wn.2d 373, 576 P.2d 64 (1974).

"The defendant's assertions of these rights must be scrupulously  
honored see *State v. McCall*, 24 Wn. App 441, 601 P.2d 975 (1979);  
*State v. Meeson*, 31 Wn. App 416, 634 P.2d 800 (1982) USCA (WA)  
Amend 5.

Here on (3) separate occasions Mr. Longshore invoked  
his rights to remain silent. An exhibit is the June  
1<sup>st</sup> statement.

Begaining on pg 62 line 38. Mr. Longshore states that "concludes it" again on pg 63 line 36 Mr. Longshore says theres nothing further. On line 22 & 23 Mr. Roaches states "do you or do you not wanna continue to talk to us?" On 23 Mr. Longshore states "I & were not willing to fucking go that route to try to get this done". Then on line 39, JR states "so you dont want to continue on with the interview". Line 41 Mr. Longshore states "whatever is... there to do".

On pg 64 line 6 "soon ther its done" were Mr. Longshores final words. on line 8 JR states Let's make it a normality then. Line 30 Mr. Longshore signs the termination form ending the interview.

After its over Mr. Longshore states "This can't be nobodys even taken in consideration to even try to" on line 32. Where before he picked up and Ram another 24 pages of transcripts. But on page 78 line 20 JR "Okay so you don't wanna talk anymore?" line 22 "well I concluded that fucking ten minutes ago and you guys kept asking me questions." Line 27 "Thats when I signed that piece of paper that it was done recording, everything was done and nothing stop yet". Line 30 JR certain nothing's stored. Line 36 Mr. Longshore states "Yeah, that I asked for it to be stopped ten minutes ago and my signature was signed out".

it wasn't, and everything kept going - P679  
 Line 14. JR "Okay and previously it was ~~said~~ is  
 when you sign that, it is now 7:52 hours and  
 that will conclude this statement.

Here (3) separate times Mr. Longshore has shown  
 he wished to end the interview. (1). Verbally beginning  
 on P6762 line 38 (2). By signing the termination form P6764  
 line 30. (3) again verbally (in b4 line 6) so when its  
 done".

On several different occasions during Mr. Longshore's  
 June 1 2012 statement, he indicated verbally and in  
 writing that he wanted to end the interview. On  
 each occasion the detectives continued to question  
 Mr. Longshore. Under such circumstances all statements  
 made after Mr. Longshore invoked his right to remain silent must  
 be suppressed.

As stated above if an individual indicates in any  
 manner "at anytime prior to or during questioning, that  
 he wishes to remain silent or speak to an attorney, the  
~~interviewer must cease Miranda. I'd see also Platnitsky, 180 F.3d 162 (2014)~~  
 interrogation must cease. Miranda. I'd see also Platnitsky, 180 F.3d 162 (2014)  
 in writing") in a manner, in State v. I-B-348 p.3d  
 1250 (Div III April 28 2015). "Invocation can be made by  
 simply shaking your head no." "In order to unequivocally  
 assert the right to remain silent, a suspect need not  
 verbally invoke his right to remain silent. USCA COT  
 Amend 5 Miranda 384 U.S. at 473-74 86 S.Ct 1603, Law  
 Enforcement officials are required to "scrupulously honor"  
 an accused "right to cut off questioning" such that the failure  
 to do so precludes admissibility of the accused's statements at

(29)

trial-only where the accused has actually asserted that right. DAVIS, 512 U.S. at 458-59, 114 S.Ct 2350. As such and demonstrated above, this court should suppress these statements after Mr. Longshore invoked his rights to end the interview. And demand for a new trial.

### Add Trial Ground 13

(B)

Mr. Longshore was misinformed of his Miranda rights to counsel by Detective Rockides when the detective stated ~~You would~~ <sup>you will</sup> not get a lawyer until the court appoints one.

In the issue at BAR on June 1st 2012, Mr. Longshore was arrested and subjected to interrogation.

On page 2 line 14-21 Det. Rockides was reading Mr. Longshore his Miranda rights, on line 23 Mr. Longshore stated "How quick can that be done", in response to Detectives line 19 "if you cannot afford to hire a lawyer, one will be appointed to represent you below questioning if you wish" where on line 35-40 Det. Rockides states "And to answer that question, if you're not gonna have a lawyer appointed for you or to you until you go to court, okay".

Mr. Longshore contends that this was a misinformed of right to counsel and violation of C.R. 3.1(c)(2).

In State v. Gasterazar-Paniagua (2013) the court ruled statements by defendant during police questioning are inadmissible if police tactics prevent the defendant

(30)

From making a rational, independent decision about giving a statement."

Here Mr. Longshore asked how given he can get an attorney provided to him if he could not afford an attorney. When detectives instead of following Rule CrR 3.1(c)(2)<sup>1</sup> at the earliest opportunity a person in custody who desires a lawyer shall "be provided access to a telephone, and the telephone number of the public defender or official responsible for assigning a lawyer."<sup>2</sup>

"Although the rule does not require the officers to actually connect the accused with an attorney, it does require reasonable efforts to do so"<sup>3</sup> see State v. Kirkpatrick 89 Wn. App. 407, 414, 948 P.2d 882 (1997) see State v. Pierce 164 Wn. App. 533, 280 P.3d 1158 (2012).

Additionally CrR 3.1(b) (1) provides

(b) state of proceedings

(1) the right to a lawyer shall accrue as soon as

feasible after the defendant is taken into custody,

appears before a committing magistrate, or is formally

charged, whichever occurs earliest.

Here, a warrant was issued May 30<sup>th</sup> for the arrest of Mr. Longshore charging him with (2) counts of Aggravated Murder. This was the earliest the right to counsel attached. June 1<sup>st</sup> Mr. Longshore was arrested and taken into custody for interrogation prior to booking Mr. Longshore in jail. Mr. Longshore was misadvised and didn't make a rational independent decision about giving a statement in violation of State v. Gustafson (en banc 2013).

(37)

Had Mr. Longshore correctly been advised of his right to counsel? ~~He longshore would or contacted counsel.~~  
It can't be said he would not of waived his right to counsel.

As such this Court should reverse & remand for a new trial with instructions suppressing the statements.

#### Additional ground 14

(15) The Court erred by admitting

Mr. Longshore's June 4<sup>th</sup> statements in trial

AFTER Mr. Longshore unequivocally invoked

his right to counsel.

In the case at bar in exhibit 7 Mr. Longshore at Pg. 22 line 36 - 39 Mr. Longshore states "And uh, I've already told my federal people they told me that if uh one of those come about to deny it and allow them to be involved with the interview"

Pg. 23 line 19 - 21 Mr. Longshore states "I = I already told you just now I already told you that I have nothing to hide. I'm just doing to follow through with the recommendation that made by the attorney allow them to be apart of it, or anything like that".

In State v. Deven Nysta 168 Wn. App. 3d, 275 P.3d 1163 (2012), the appellate court faced comparable situation in a manner in a case where defendant Nysta was being asked questions by a detective and the question of whether he would submit to a polygraph examination was raised. Although Nysta was at first willing, he then suggested that he needed to speak

with his attorney first. See Deven Nysta 168 un. App. at 37-39. The court then focused on what was required to successfully invoke right to counsel. The court stated that "the suspect must articulate his desire to have counsel present sufficiently and clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney." Id. at 41. The state contended that Nystra's request for an attorney was equivalent because Nystra's answers suggests that he was willing to continue the interview without the assistance of counsel, but he wanted to consult with counsel before make a final decision about whether or not to take a polygraph. Id. at 42. The court rejected this analysis of the "interpretation" and stated Nystra did not say "maybe" or "perhaps" or condition his request under any circumstances. Rather, he stated that "I gotta talk to my lawyer" was unambiguous. Id. The court held that "where nothing about the request for counsel or the circumstances leading up to the request would render ambiguous all questioning must cease." Id. at 42. ~~The court held that "where nothing less than the request further" the interrogator may not proceed on his own terms as if the defendant had requested nothing.~~ Id. The court held that it was error for the trial court to determine that Nystra did not effectively invoke his right to counsel.

Here the same assessment can be made based on Mr. Longshore's request for counsel at the time the

Polygraph discussion was raised. Rather than end the questioning or inquire into if it was Mr. Longshore requesting an attorney Det Rhodes and SGT Heilsmith continued with their questioning.

As such this court should reverse and remand for a new trial with instructions to suppress the statements made after Mr. Longshore invoked counsel.

(Conclusion)

~~Based~~

Additional ground 15

(15) Cumulative errors denied Mr.

Longshore a fair trial.

Reversal may be required due to the cumulative effects of trial courts errors, even if each error standing alone would otherwise be considered harmless. See State v. Coe, 101 Wn.2d 772, 789, 684 P.2d 669 (1984), State v. Badda, 63 Wn.2d 176, 186, 385 P.2d 859 (1963), State v. Alexander, 64 Wn. App. 147, 154, 822 P.2d 1250 (1992). Error may take one of two forms - constitutional and non-constitutional error. State v. Whelchel, 115 Wn.2d 708, 728, 801 P.2d 948 (1990), State v. Guley, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985) cert denied 475 U.S. 1020, 106 S.Ct. 1208, 89 L.Ed. 2d 321 (1986).

(37)

Constitutional error requires reversal unless the reviewing court is convinced beyond a reasonable doubt that any reasonable jury would have reached the same result in absence of the error, whether at 728, Guiley, at 425, non-constitutional error requires reversal if, within reasonable probabilities, it materially affected the outcome of trial. State v. Halstien, 122 Wn.2d 109, 127, 857 P.2d 270 (1993), State v. Thorp, 96 Wn.2d 591, 599, 637 P.2d 961 (1981).

Here the errors mentioned above unfairly prejudiced Mr. Longshore's right to a fair trial. This case is where the jury weighed credibility of Mr. Repherel and Mr. Longshore. Absent the errors set forth above in this brief Mr. Longshore would have been acquitted, because it cannot be stated beyond reasonable doubt that Mr. Longshore's conviction would stand absent the jury receiving and not receiving the evidence as outlined above reversal is required.

### (Conclusion)

As such this court should grant the relief described above. And if for whatever reason the court finds that this brief is insufficient to ask that counsel add additional brief to assist in what I'm trying to get across.